

MINUTES

**MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON FISH AND GAME

Call to Order: By **CHAIRMAN MIKE SPRAGUE**, on February 25, 2003 at
3 P.M., in Room 422 Capitol.

ROLL CALL

Members Present:

Sen. Mike Sprague, Chairman (R)
Sen. Dan McGee, Vice Chairman (R)
Sen. Keith Bales (R)
Sen. Gregory D. Barkus (R)
Sen. Ken (Kim) Hansen (D)
Sen. Dale Mahlum (R)
Sen. Trudi Schmidt (D)
Sen. Debbie Shea (D)
Sen. Bill Tash (R)
Sen. Joseph (Joe) Tropila (D)

Members Excused: None.

Members Absent: None.

Staff Present: Jane M. Hayden, Committee Secretary
Mary Vandenbosch, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion
are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 392, 2/19/2003
Executive Action:

HEARING ON SB 392

Sponsor: **SENATOR KEITH BALES**

Committee

Sarah McCullough, Montana Audubon

SENATOR BALES stated that in a couple of instances, resource users are seeing FWP's concerns over sage grouse are being used

to affect land use activities. One instance is the use of Bureau of Land Management (BLM) lands in southwestern Montana. The BLM filed documents that recognize FWP's Sage Grouse Management Plan would propose standards and guidelines applying to land use activities with the potential to affect sage grouse. Another instance involved a FWP biologist's commenting to the Forest Service concerning grazing allotments in southwestern Montana. If the proposed Sage Grouse Management Plan was carried out, it would affect land use activities across the State. SB 392 clarifies that FWP manages fish and wildlife, and land-use management agencies manage resources. In addition, SB 392 verifies that FWP's management plans would comply with the Montana Environmental Protection Agency (MEPA) processes.

Proponents' Testimony:

EXHIBIT (fis42a01) and **EXHIBIT (fis42a02)**

John Bloomquist, Montana Stockgrowers Association, testified that SB 392 asks the fundamental question: is FWP a fish and wildlife management agency, or a habitat and land-use agency? When Species Management Plans for those species listed as candidates or potential candidates are looked at, SB 392 says that FWP should look at their own programs in developing those plans. FWP should look at their authority to include the management of predators for the protection of particular species. SB 392 specifies that FWP should not develop or implement plans that are primarily land-use management plans.

Mr. Bloomquist (hands out first exhibit) stated that this first document is BLM's proposed resource management plan in Dillon, Montana. People who do not think these particular documents would be used for land use controls or restrictions, need to read the part that discusses sage grouse and how the Sage Grouse Management Plan would be utilized as guidelines for activities on BLM lands. One of our major concerns with the Sage Grouse Management Plan is its direction for sagebrush management and the adoption of the Connelly standards and guidelines that we have suggested repeatedly should not be adopted across the board.

Mr. Bloomquist (hands out second exhibit) explained that the second document was a letter from a FWP biologist to the United States Forest Service dealing with grazing allotments in southwest Montana (and has sage grouse written all over it.) So, the Sage Grouse Management Plan, as is the prairie dog plan, as is the cutthroat (trout) plan, as is the greyling plan, might be directed at land use and not FWP management of wild game, fish, or predators. Many resource users are concerned that

these plans would be carried out as land-use restriction plans. Some of these users are here today to testify.

Jay Bodner testified that SB 392 could be an effective way to ensure that Listed Species and Species of Special Concern, could be properly managed, but not at the expense of putting landowners out of business. With the increase in management plans in Montana, including the plans for the sage grouse and prairie dog, it is important to see that the true objectives of these plans are being met. The objective is to keep these species in existence, but the FWP should work with landowners to achieve this goal.

Mr. Bodner stated that in the planning stage of the Sage Grouse Management Plan, FWP's proposal included managing potential habitats. The potential habitat of the sage grouse is 27 million acres. Members of the Association of State Grazing Districts are in 28 grazing districts and have an allotment of a million Animal Unit Months(AUM)and over about 10 million acres. The sage grouse habitat alone encompasses every grazing district and every member on those grazing districts, totaling about 900.

Mr. Bodner explained that looking at the management plans that are coming down the line, it is frightening how much land these species inhabit or control. When these management plans are developed instead of just focusing on the land and the habitat, SB 392 provides for control of the predators, as well as their prey. A key fact is that predators are on the increase and play an important role in keeping down the populations of other species.

Mr. Bodner was concerned with how some of the agencies would use these standards and guidelines. Some guidelines talk about seven-inch stubble heights, and in most of eastern Montana, that cannot be reached even in a good year. It is important that FWP focus on the species themselves and support the landowners whose actions have allowed many of these species to have the healthy populations that they do today.

Jim Higgenbarth, Montana Stockgrowers Association, stated that his family has been in agriculture for 130 years in southeastern Idaho and southwestern Montana. We take our responsibility as resource managers very, very seriously, and are extremely concerned. When the Endangered Species Act (ESA) originated, it was a good piece of legislation, but now it is being used for single-issue management of species for the purpose of changing land use. It also provides tremendous employment for wildlife biologists and researchers. Why am I concerned? The Federal land ranchers in the State of Montana, have to manage

BLM, Forest Service, State Lands, some Fish, Wildlife, and Parks lands, and private lands. They have to put their arms around them and manage them as a unit. We have to make them work, so we can economically support our industry, our families, and this state and the infrastructures of our counties. This is tremendously difficult because each of these agencies have their own direction and their own management plan. They are pulling the landowners here and there and it is very difficult when everyone is running from the Endangered Species Act (ESA). The ESA is tearing Montana apart, it is tearing apart the intermingled Federal resources and destroying them because resources cannot be managed for a single use, it does not work.

Jim Higgenbarth stated that his family has spent 130 years of our lives putting our arms around this resource, to keep it sustainable and to keep it healthy. It is time that we stand up or there will be no reason to stand up. It takes a tremendous infrastructure for the livestock industry to put its arms around this resource and make it work. I happen to be involved in a sage grouse group in Idaho and the Big Hole Watershed Committee in Montana. We get along great as a citizen group with the biologists of Montana's FWP. We work as a team and it really works.

Mr. Higgenbarth stated that however, on another issue with different biologists in the State of Idaho, we worked four years to try to come up with a plan on sage grouse management. What is wrong--you are managing for the sage grouse, and the sage grouse at a certain time of the year does not require a healthy resource, it requires a decadent, mature resource. For a migratory group of birds, the agencies want the landowners to manage 291,000 acres under those conditions. Managing Mountain Big Sage under those conditions in a mesic area, is impossible to do. I threw my cowboy hat on the ground and I said I was going to put on the sage grouse hat and by God, we are going to make this work. Before that I spent \$50,000 putting 5,000 acres into a "system" with nine fields so we could manage the brush growth every three years. If the brush growth in that area is not managed, it gets out of control quickly. It burnt in 1981, and now, 21 years later, the brush is back and the biologists say in the sage grouse plan that the brush should not be more than 30 percent Mountain Big Sage. BLM just did a fuel-load study, and 18 of the 19 plots studied contained 30 to 61 percent Mountain Big Sage. The resource is carrying fuel loads that are unbelievable.

Mr. Higgenbarth explained that what is important here, is that we are all running from the ESA. It is time that we stop and stand up. SB 392 gives us a tool that FWP can use to work

with the U.S. Forest Service and the ranchers. It also gives them a tool to control the rampant biologists that work with them. I have heard those biologists say, "I know what is right, and to hell with the administration, they do not know a damned thing." Our group in Idaho is hung up by one man and that man is sticking to just what the Endangered Species Act says. He is following the purpose of the environmental community, using the ESA to change land use. If we continue down this road, we are going to lose the public land ranchers and large pieces of private ground (which are usually the best) will become Federal land--the ranchers and the land are going to be gone. Our payment loan schedules are based upon the 80 Animal Unit Months (AUM's) raised off that property, if we lose that property, we lose our ranches, and we may lose the river bottoms, too. Then the people who are going to own those areas, will not want anyone on them, but themselves. This is serious. Please pass SB 392 because it would give FWP something to work with and it would ensure that they are working only from the biology of the animals. Let the land management agencies and the private land owners manage the habitat. They are educated and trained to do that, and have the experience.

John Semple, Montana Cattle Woman and speaking for Bob Gilbert of the Montana Stockgrowers Association, testified that we echo the previous statements, please pass SB 392 and help us survive.

EXHIBIT(fis42a03)

Chuck Rein, Chairperson of the Montana Stockgrowers Association's Landowner, Recreation, and Wildlife Committee, testified that the Association supports passage of SB 392 with as much passion as **Jim Higgenbarth** did.

EXHIBIT(fis42a04)

Maxine Korman, Hinsdale, Montana, handed in a written exhibit, but did not testify.

Opponents' Testimony:

EXHIBIT(fis42a05)

Jeff Hagener, Director of Fish, Wildlife, and Parks Department (FWP), testified that they may not be such strong opponents depending on the interpretation of what SB 392 actually does. What we are talking about, in large part, are conservation strategies and they deal with numerous species. FWP recognizes that it owns only a very small amount of land, but FWP is charged with managing species under various statutes that crossover multiple land ownerships. Therefore, it is critical that FWP

work cooperatively with other land management agencies and private landowners.

Mr. Hagener, then read from his exhibit, verbatim.

Mr. Hagener added that FWP has done several plans on species that are currently Listed Species. Presently, there is a draft conservation plan for grizzly bear in the Yellowstone ecosystem. This plan will be signed off jointly by the Park Service, the Forest Services, the BLM, and several other involved entities. If SB 392 says FWP cannot do that, then the delisting of the grizzly bear would have to be thrown out. FWP would have to do the same with our conservation strategy for the wolf conservation plan. Obviously, we do not own the land that the wolf roams and ranges over, but in order for our conservation strategy to work we have to have cooperation and coordination with all land managers. The same action would apply to the Sage Grouse Management Plan talked about today. We also have the prairie dog plan that was mentioned today. In addition, we have the Yellowstone cutthroat trout plan signed off by multiple parties. Again, they are all joint strategies and efforts. We have several other plans that deal with paddlefish, greyling, and bull trout. These are all Listed Species that FWP is working currently to try to get delisted. If SB 392 is interpreted this broadly, then SB 392 mandates that FWP cannot complete any of these efforts. So our efforts to manage these species in compliance with the Endangered Species Act would be greatly hindered. Then it is likely that more species would be listed and other species currently listed, could not be delisted.

Susan Campbell Reneau, Author, testified that she has never been to the Capitol before this Legislative Session. The reason she is opposing SB 392 is that she is a Theodore Roosevelt Republican. **Ms. Reneau** stated SB 392 is an example of many bills in this Session, proposed by Republicans, wanting to take the power of professional wildlife management away from Fish, Wildlife, and Parks. **Ms. Reneau** agreed with **Jeff Hagener's** comments, and would not be opposing SB 392, if she did not feel that SB 392 goes to the very core of the problem. She stated that some landowners think they own the wildlife, and that the wildlife is for sale. We must have professional wildlife managers involved in every aspect of wildlife management. Therefore, I hope all of you, as Republicans, will someday read Theodore Roosevelt's concepts of wildlife management, and will oppose SB 392.

Stan Frasier, Helena, testified that he is always alerted when he sees **SENATOR KEITH BALES'** name on a bill because

SENATOR BALES supports bad ideas. Livestock grazing on western public lands is very much a failed experiment. There has been enormous damage to the land and the long term health of the land often because of livestock grazing. Public lands are not managed for their health, they are not managed for the wildlife, they are managed as a "pork" (barrel) project by our Senators and Representatives in Washington, D.C., and they should not be. They should be managed for the long term health of the land and for wildlife conservation. If livestock grazing can be done without defeating these two objectives that would be fine. However, it has not been done that way and I think it is way past time that we take an honest look at the whole situation. SB 392 is a step in the wrong direction.

SENATOR MIKE SPRAGUE scolded **Mr. Frasier** for his disrespect to **SENATOR BALES**. **SENATOR SPRAGUE** stated that **Mr. Frasier** will refer to the bill and not to the person who is sponsoring the bill. You will comment on the quality bill and not throw accusations around.

Ron Moody, Montana Wildlife Federation, testified that the Federation sees the most important principle harmed by SB 392 is the strength of the public trustee, FWP, and its ability to do its job to manage our wildlife resources. Frankly, it is irrational to think that FWP can manage an animal species in the absence of its habitat. FWP has a few programs like Habitat Montana and conservation easements where they do some land management under their own direction, but those are very small projects. Organizations such as the Rocky Mountain Elk Foundation and the Wild Sheep Foundation exist to bring together resources to create habitat so wildlife can prosper. There is no such thing as a wildlife species in the absence of its habitat.

Mr. Moody explained that the problem that we currently face is deciding how to manage wildlife and wildlife habitat when private landowners control one part of the puzzle, the Federal Government another, the State another, and nobody really wants the power to tell everybody else what to do. We want to create a collaborative, cooperative outcome. When a species like the sage grouse gets into trouble, we have a short time before **{Tape: 1; Side: B}** it is elevated to the level of conflict that the wolf and grizzly bear are in. The solution is not to let the sage grouse get listed under the ESA in the first place. The way to accomplish that is for people to work together. For people to be able to work together, they have to have the authority to make fully informed decisions and then carry them out. SB 392 was described as a tool for FWP, and if a straight-jacket is a tool, then this is a tool. SB 392 limits the ability of FWP to engage

in cooperative management activities with other government and land management agencies. However, there is a dilemma that SB 392 does not solve--the need to work with groups like the Sage Grouse Management Group and not try to legislate biology.

Tony Schownen, testified that many people are frustrated with Federal agencies. **Mr. Schownen** worked with BLM and the Forest Service on very early stage of the Sage Grouse Management Plan, and it was totally frustrating. He could understand **Jim Higgenbarth's** viewpoint and dissatisfaction with the process. SB 392 would do away with all the memorandums of understanding put together by the BLM, the Forest Service, sportsmen, State Lands, and the other agencies that are working with sage grouse and sage grouse habitats. **Mr. Schownen** would like to see SB 392 pared down so that it does not take away all the authority of the Department of Fish, Wildlife, and Parks.

Informational Testimony: None given.

Questions from Committee Members and Responses:

SENATOR TRUDI SCHMIDT asked **Jeff Hagener** what couldn't FWP do, if SB 392 was passed. **Mr. Hagener** responded that FWP was mandated to balance maintenance of species and habitat with cooperative partners and SB 392 says that FWP cannot do what they were mandated to do.

SENATOR MIKE SPRAGUE asked **Jeff Hagener** if FWP has to enforce the ESA, does the Federal government make FWP do that. **Mr. Hagener** explained that the Federal Government enforces the ESA. **SENATOR SPRAGUE** asked **Mr. Hagener** if the Federal Government delegates any of the enforcement of the ESA to FWP. **Mr. Hagener** answered that FWP investigates problems (like the wolf), but has no authority to enforce the ESA. **SENATOR SPRAGUE** asked **Mr. Hagener** then how would the restrictions that SB 392 places on FWP affect the Federal Government's ability to enforce the ESA. **Jeff Hagener** explained that if a species is a candidate for listing under the ESA, and FWP does not have conservation strategies in place for that species, then the Federal Government is more likely to consider listing the species as Endangered or Threatened. **SENATOR SPRAGUE** asked **Mr. Hagener** if FWP does not have a plan, what would happen. **Mr. Hagener** stated that the Federal Government would impose its will.

SENATOR MIKE SPRAGUE asked **Jeff Hagener** if SB 392 is passed and a "straightjacket" is put on the ability of FWP to manage

species and their habitat, then would all of the control go to the Federal Government and would the consequences be even worse than they are now. **Mr. Hagener** responded that the consequences would be worse, if the species were listed (under the ESA). For example, the bull trout is currently listed as a Threatened Species, specific habitat mechanisms can be put in place, but FWP has to get approval from the Federal Government to do anything. The timber people have many restriction when harvesting in bull trout habitat. On the other hand, FWP has a conservation strategy for westslope cutthroat trout, they were not listed (on the ESA) largely because FWP had a conservation strategy in place and that strategy allowed FWP to work cooperatively with all of the landowners whether they were State, Federal, or private. They are not listed (on the ESA), so these species are under the State's management.

SENATOR BILL TASH asked **John Bloomquist** about legislation enacted two sessions ago, concerning species management of westslope cutthroat trout, and what the purpose of it was. **Mr. Bloomquist** responded that the westslope cutthroat trout bill concerned management of FWP's own program, and was not about the management of habitat.

SENATOR MIKE SPRAGUE asked **John Bloomquist** if SB 392 was passed, could it not come back to bite us. **Mr. Bloomquist** stated that if the Association thought that the conservation strategies on the various species were preventing listings and doing something positive in that regard, they probably would not want SB 392. However, the track record does not bear that out as the Federal Government continues to push the listings anyway.

SENATOR SPRAGUE asked **Mr. Bloomquist** if all of the solutions would then be up to the Federal Government. **Mr. Bloomquist** responded that the Association would love to change the Endangered Species Act, and that they have tried and tried and tried. So it is clear what SB 392 is about, one concern is directing FWP to manage their programs to facilitate prevention of listings. Another concern is to protect at-risk species, not necessarily to develop a plan that turns into a habitat land use plan. This is where we see the Sage Grouse Management Plan going, and that is the way it spells it out and the way the Federal agencies are reacting to it. SB 392 urges FWP to go through the Montana Environmental Protection Agency (MEPA) process to manage the habitat. Right now, it does not exist, and the MEPA process assures that these species management plans would have public comment. The whole MEPA process is missing from some of these proposals.

SENATOR TRUDI SCHMIDT asked **Jim Higgenbarth** when referring to Federal agencies, were you saying that SB 392 would give a tool to FWP in dealing with them in a favorable way.

Jim Higgenbarth answered that when they make up the sage grouse guidelines, it is extremely important that everyone understand the biology of the species that FWP is managing. The sage grouse guidelines proposed by Connelly, moved into management of the habitat, and although Mr. Connelly is a tremendous sage grouse biologist, he is not a habitat biologist. And so, the BLM and the Federal agencies took his stuff and realizing that the U.S. Fish and Wildlife Service (being biologists), lean toward Mr. Connelly's recommendations, it prejudices the Federal agencies and how they are suppose to manage the resource. What is important is the long-term health of the resource. If the resource is not managed for its long term health then it will not support much wildlife. What happens is they are skewing the resource (habitat) for a particular species, preventing the agencies from managing the resource the way it should be. Instead, the agencies need to manage the resource so it stays viable long term, and supports many different kinds of wildlife, not just a single species. My interpretation of SB 392 is that it helps the biologists, and tells the land managers, the ecologists, and the range resource people what they need. Let the range resource people, who understand the resource, satisfy the requirements of the species along with everything else. SB 392 gives a tool to FWP to put pressure on the U.S. Fish and Wildlife Service and individual Federal biologists (who are extremely difficult to manage). SB 392 allows FWP say this is where it stops.

SENATOR SCHMIDT asked **Jeff Hagener** to respond to **Jim Higgenbarth's** statements. **Mr. Hagener** stated that FWP does not disagree with a large expanse of what **Mr. Higgenbarth** is saying, but FWP is trying to provide the biology by doing it cooperatively. FWP does not have control over how the Federal Government interprets or applies their findings. In particular, FWP spent a great deal of time on the Sage Grouse Management Plan talking with the Federal Government about the guidelines. FWP does not necessarily agree with the Connelly guidelines either, and that is why FWP went through a much broader process. We had members of the stockgrowers actually writing the sections about the grazing lands, so I do not think we are disagreeing. FWP wants to manage for overall ecosystem part of it.

Closing by Sponsor:

SENATOR KEITH BALES stated that in three of the meetings held in conjunction with the Sage Grouse Committee, he heard

from ranchers whose families had been on their land for 70 to 130 years. These ranchers said that they had been managing their range the same for 25 to 30 years. Yet during that time, they had seen the sage grouse population diminish. What has made that difference are the predators, and how much predation is going on in the sage grouse community. And yet, the main focus in FWP's plan is placing standards and guidelines on the habitat. What does FWP say about predators? The first thing they say is that they need more study. SB 392 was formulated because FWP is suppose to manage fish, wildlife, and the birds of this State and the interrelationship of those species, not habitat. **Jeff Hagener** said that they could not use the wolf plan. Well the wolf plan deals with the interrelationship of species, the population numbers, and their relationship with the elk in Yellowstone National Park. And I question how good a job they did because some of their biologists were denying what was going on. It took the Chair and Vice-Chair of the Montana House Fish and Game Committee to go there to bring some things to light about wolf management. The grizzly bear plan has a great deal to do with the interrelationship of species. **Stan Frasier** commented that the land management had failed, but if we look at our public lands now, they are populated with more wildlife of virtually every kind. Some species have diminished because of an increase in other wildlife, but there is more wildlife now than has been there in the last 50 years. Besides the abundance of wildlife, there is livestock and good opportunities for fishing. We heard earlier today that Montana has the best fishing in the country. If that is poor management, if that is a failure, well so be it, I guess. What needs to be done, is for FWP to manage the things that they are best at managing, and leave land management to land management agencies. There are two examples here of letters, one letter from FWP to a land management agency trying to put their view on land management. What **Jim Higgenbarth** was saying is to let the land managers manage the land and they cannot do it objectively with FWP imposing their will. So, I would ask for passage of the SB 392.

EXECUTIVE ACTION ON SB 392

Motion/Vote: SEN. BALES moved that SB 392 DO PASS. Motion failed 5-5. Voting ayes were SENATORS BALES, BARKUS, HANSEN, SHEA and TASH. Voting nays were SENATORS MAHLUM, McGEE, SCHMIDT, SPRAGUE and TROPILA.

ADJOURNMENT

Adjournment: 7:30 P.M.

SEN. MIKE SPRAGUE, Chairman

JANE HAYDEN, Secretary

MS/JH

EXHIBIT (fis42aad)